

NEBRASKA ADMINISTRATIVE CODE

TITLE 249, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 1

NEBRASKA DEPARTMENT OF MOTOR VEHICLES

**RULES AND REGULATIONS GOVERNING NOTICE AND HEARING FOR
AGENCY CONTESTED CASES PURSUANT TO THE MOTOR VEHICLE
OPERATORS' LICENSES STATUTES, SUBPART H: PROVISIONS APPLI-
CABLE TO OPERATION OF COMMERCIAL MOTOR VEHICLES,
NEB.REV.STATS. 60-4,163 THROUGH 60-4,172, AND THE NEBRASKA
ADMINISTRATIVE PROCEDURE ACT, NEB.REV.STATS. 84-913 THROUGH
84-920.**

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TITLE 249 NEBRASKA DEPARTMENT OF MOTOR VEHICLES

CHAPTER 1

CHAPTER 1 RULES AND REGULATIONS GOVERNING NOTICE AND HEARING FOR AGENCY CONTESTED CASES PURSUANT TO THE MOTOR VEHICLE OPERATORS' LICENSES STATUTES, SUBPART H: PROVISIONS APPLICABLE TO OPERATION OF COMMERCIAL MOTOR VEHICLES, NEB.REV.STATS. 60-4,163 THROUGH 60-4,172, AND THE NEBRASKA ADMINISTRATIVE PROCEDURE ACT, NEB.REV.STATS. 84-913 THROUGH 84-920.

001 SCOPE. These rules and regulations govern practice and procedure before the Department of Motor Vehicles of the State of Nebraska pursuant to the Provisions Applicable to Operation of Commercial Motor Vehicles, Neb.Rev.Stat. 60-4,163 through 60-4,179, and the Nebraska Administrative Procedure Act, Neb.Rev.Stat. 84-913 through 84-920. Hearings pursuant to the Administrative License Revocation Act, Neb.Rev.Stat. 39-669.08 through 39-669.18, and 247 NAC, Chapter 1, are exempt from these rules and regulations.

002 DEFINITIONS.

002.01 Appellant means any person who files a petition with the Department to request a hearing to defend or contest the disqualification of his or her commercial driver's license or operating privileges by the Department.

002.02 Commercial Motor Vehicle means a motor vehicle used or designed to transport passengers or property (a) if the motor vehicle has a gross vehicle weight rating of more than twenty-six thousand pounds, (b) if the motor vehicle is designed to transport sixteen or more passengers, including the driver, or (c) if the motor vehicle is transporting hazardous materials and is required to be placarded pursuant to section 75-364. Commercial motor vehicle shall not include (a) a farm truck as defined in Neb.Rev.Stat. 60-301 other than a combination of truck-tractors and semitrailers when such farm truck is operated within one hundred fifty miles of the registered owner's farm or ranch, (b) any self-propelled mobile home or motor vehicle drawing a cabin trailer as such terms are defined in Neb.Rev.Stat. 60-301, (c) any emergency vehicle operated by a public or volunteer fire department, or (d) any motor vehicle owned or operated by the United States Department of Defense or Nebraska National Guard when such motor vehicle is driven by uniformed, military operators performing duty in the active service of the United States or this state.

002.03 Commercial Driver's License means an operator's license, including a restricted commercial driver's license, issued in accordance with the requirements of the Motor Vehicle

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Operator's License Act to an individual which authorizes such individual to drive a class of commercial motor vehicle.

002.04 **Department** means the Department of Motor Vehicles.

002.05 **Director** means the Director of the Department of Motor Vehicles or his or her designee.

002.06 **Ex parte communication** shall mean an oral or written communication which is not on the record in a contested case with respect to which reasonable notice to all parties was not given. Ex parte communication shall not include:

002.06A Communications which do not pertain to the merits of a contested case;

002.06B Communications required for the disposition of ex parte matters as authorized by law;

002.06C Communications in a ratemaking or rulemaking proceeding; and

002.06D Communications to which all parties have given consent.

002.07 **Hearing Officer** means an individual appointed by the Director to preside at an administrative hearing.

002.08 **Petition** means the initial document filed by or with an agency that sets forth a claim and request for agency action.

002.09 **Party** means the person by or against whom a CDL disqualification is brought or a person allowed to intervene in a CDL disqualification.

002.10 **Pleading** shall mean any written application, petition, complaint, answer, motion, or other formal written document used in any proceeding before the Director.

002.11 **Proceeding** shall mean all matters formally made in connection with any commercial motor vehicle operator's license disqualification.

002.12 **Restricted Commercial Driver's License** shall mean a class of commercial driver's license issued in accordance with the requirements of the Motor Vehicle Operator's License Act.

002.13 **Substantial Injustice** means actual violation of the right or rights of a party.

003 EX PARTE COMMUNICATIONS.

003.01 Prohibitions; when applicable. The prohibitions found in this section shall apply beginning at the time notice for hearing is given. An agency may designate an earlier time, but such earlier time shall be required to be set forth in the agency's rules of procedure.

003.02 Prohibitions; to whom applicable.

003.02A Parties and public. No party in a CDL disqualification hearing or other person outside the agency having an interest in the hearing shall make or knowingly cause to be made an ex parte communication to the hearing officer or to an agency head or employee who is or may reasonably be expected to be involved in the decisionmaking process of the contested case.

003.02B Persons in decisionmaking roles. No hearing officer or agency head or employee who is or may reasonably be expected to be involved in the decisionmaking process of the CDL disqualification hearing shall make or knowingly cause to be made an ex parte communication to any party in a CDL disqualification hearing or other person outside the agency having an interest in the CDL disqualification hearing.

003.02C Investigators. No agency head or employee engaged in the investigation or enforcement of a CDL disqualification hearing shall make or knowingly cause to be made an ex parte communication to a hearing officer or agency head or employee who is or may reasonably be expected to be involved in the decisionmaking process of the CDL disqualification hearing.

003.03 Disclosure of contacts. The hearing officer or agency head or employee who is or may reasonably be expected to be involved in the decisionmaking process of the CDL disqualification hearing who receives or who makes or knowingly causes to be made an ex parte communication set forth in subsections 003.02A through 003.02C shall file in the record of the CDL disqualification hearing:

003.03A All such written communications;

003.03B An ex parte communication memoranda (Attachment 1) stating the substance of all such oral communications; and

003.03C All written responses and memoranda stating the substance of all oral responses to all the ex parte communications.

003.03D The filing shall be made within two working days of the receipt or making of the ex parte communication. Notice of the filing, with an opportunity to respond, shall be given to all parties of record.

003.03E Filing and notice of filing provided under subsection 003.03D shall not be considered on the record and reasonable notice for purposes of the definition of ex parte communication.

004 **INTERVENTION IN A CDL DISQUALIFICATION HEARING.**

004.01 Intervention in a CDL disqualification hearing shall be allowed when the following requirements are met:

004.01A A petition for intervention must be submitted in writing to the hearing officer at least five (5) days before the hearing. Copies must be mailed by the petitioner for intervention to all parties named in the hearing officer's notice of the hearing;

004.01B The petition must state facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

004.01C The hearing officer must determine that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

004.02 The hearing officer may grant a petition for intervention at any time upon determining that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

004.03 If a petitioner qualifies for intervention, the hearing officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Those conditions may include:

004.03A Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

004.03B Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

004.03C Requiring two or more intervenors to combine their presentation of evidence and

argument, cross-examination, discovery, and other participation in the proceedings.

004.04 The hearing officer, at least 24 hours before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions and briefly stating the reasons for the order.

004.04A The hearing officer may modify the order at any time, stating the reasons for the modification.

004.04B The hearing officer or designee shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

005 COMMENCEMENT OF THE HEARING.

005.01 Petition Received. The CDL disqualification hearing case begins with the filing of a petition and request for hearing with the agency. The petition shall be in a form prescribed by the Department (Attachment 2).

005.02 Form of Petition. The Petition must be completed and returned to the Nebraska Department of Motor Vehicles, Legal Division, P.O. Box 94789, Lincoln, NE 68509-4789 in the addressed envelope provided. The Petition must be received or postmarked within ten (10) days after the Appellant receives Notice of Disqualification; otherwise, the Appellant's right to a hearing to contest the automatic disqualification of his or her commercial driver's license or operating privileges will be foreclosed and the license will be automatically disqualified. The Notice of Disqualification will be deemed received by the Appellant five (5) days after the date of mailing of the Notice by the Director of the Department of Motor Vehicles.

005.03 Notice of Hearing. Upon receipt of a timely filed petition, the Director shall serve written Notice of Hearing by mailing said notice to the Appellant by certified or registered mail to the address provided by the Appellant on the petition form and the attorney of record or other representative of record, if one is provided on the petition form, and upon all unrepresented parties. Failure of such person to actually claim or receive the Notice shall not invalidate the Notice.

005.04 Time of Notice. The Notice of hearing shall be served by mailing as specified in 005.03 above postmarked at least seven (7) days prior to the date fixed for hearing by certified or registered U.S. mail.

005.05 Content of Notice. The notice shall state the time and place of the hearing and the name of the hearing officer.

005.06 Proof of Service. The proof of service shall be filed with the Director.

005.07 Copy to Officer. A copy of the Notice of Hearing shall also be served on the officer(s) who submitted the sworn report. Copies need not be sent certified or registered mail.

006 HEARING OFFICERS.

006.01 Appointment. Hearing Officers shall be appointed by the Director in writing. Such appointment shall be of public record in the Director's office.

006.02 Qualifications. Hearing Officers shall be attorneys licensed to practice law in Nebraska.

006.03 Unbiased and Impartial. The Hearing Officer appointed by the Director is not a party to the proceedings and shall perform as an unbiased and impartial arbiter of the facts.

006.04 A person who has served as investigator, prosecutor, or advocate in the CDL disqualification of the Appellant in a specific CDL disqualification hearing or in its prehearing stage may not serve as hearing officer or assist or advise a hearing officer in the same proceeding except as provided in subsection 006.06.

006.05 A person who is subject to the authority, direction, or discretion of one who has served as investigator, prosecutor, or advocate in the CDL disqualification hearing or in its prehearing stage may not serve as hearing officer or advise a hearing officer in the same proceeding except as provided in subsection 006.06 of the CDL disqualification hearing.

006.06 If all parties consent, a person who has served as, or who is subject to the authority, direction, or discretion of one who has served as investigator, prosecutor, or advocate in a CDL disqualification of the Appellant in a specific CDL in its prehearing stage, may assist a hearing officer in the preparation of orders.

006.07 A person who has participated in a determination of probable cause or other equivalent preliminary determination in a contested case may serve as hearing officer or assist or advise a hearing officer in the same proceeding.

006.08 A person may serve as hearing officer at successive stages of the same contested case.

006.09 Recusal. No Hearing Officer shall participate in a hearing in which they have an interest. For good cause shown or on the Director's own motion, the Hearing Officer may recuse his or herself from conducting the hearing. Motions for recusal by the Appellant shall be made in writing

to the Director and must be received no later than three (3) days prior to the date of the hearing.

006.10 Powers and Duties. The Hearing Officer shall have the duty to conduct full, fair, and impartial hearings, to take appropriate action to avoid unnecessary delay in the disposition of the proceeding and to maintain order. He or she shall have the power to:

006.10A Preside at hearings on commercial motor vehicle license disqualification;

006.10B Administer oaths and affirmations;

006.10C Issue subpoenas as authorized;

006.10D Compel discovery and impose appropriate sanctions for failure to make discovery;

006.10E Rule upon offers of proof and receive relevant, competent and probative evidence;

006.10F Regulate the course of the proceedings in the conduct of the parties and their representatives;

006.10G Hold prehearing conferences for simplification of the issues, settlement of the proceedings, or any other proper purposes;

006.10H Consider and rule orally or in writing, upon all procedural and other motions appropriate in adjudicative proceedings;

006.10I Fix the time for holding the record open for additional evidence or for submission of briefs;

006.10J Exclude persons from the hearing;

006.10K Issue recommended decisions, rules and orders, as appropriate; and

006.10L Take any other action consistent with the purpose of the law.

007 PARTIES. The parties in commercial motor vehicle driver's license disqualification hearings shall be the Department of Motor Vehicles and the persons defined as party in section 002.09 of these rules and regulations.

008 BURDEN OF PROOF.

008.01 Appellant. The burden of proof in any commercial motor vehicle driver's license disqualification hearing shall be on the Appellant.

008.02 Preponderance of the Evidence. The Appellant must show by the preponderance of the evidence why his or her license or privilege to drive a commercial motor vehicle should not be disqualified for the statutory period.

008.03 Sworn Report. The sworn affidavit of the arresting officer shall be received into the record by the Hearing Officer as the jurisdictional document of the hearing, and the receipt of the sworn report shall establish a prima facie case for the Department.

009 REPRESENTATION AT HEARING. A party may appear in their own behalf or through an attorney licensed to practice law in Nebraska.

010 DISCOVERY.

010.01 Motions for Discovery. All such motions may be granted or denied at the Director's discretion. If granted, the Director may set timelines for such discovery.

010.02 Time for Filing Motions. All discovery motions must be filed in writing and received no later than five (5) days prior to the hearing. If such motion is not both filed and received by the Director within the time or in the manner specified and substantial injustice will not result, the request will be denied.

010.03 Content. Any prehearing discovery motions shall

010.03A Quote the question or subpoena at issue, or be accompanied by a copy of the subpoena or question;

010.03B State the reasons supporting the motion;

010.03C Be accompanied by a statement setting forth the steps or efforts made by the moving party or his or her counsel to resolve by agreement the issues raised and that agreement has not been achieved; and

010.03D Be filed with the agency. The moving party must serve copies of all such motions to all parties to the contested case.

010.04 Telephone Hearings.

010.04A Department's Exhibits. When a hearing is conducted by telephone, the Department shall serve the Appellant with a copy of the official exhibits in its casefile by mailing them attached to the Notice of Hearing to the Appellant or their attorney. Each exhibit shall be pre-marked for ease of identification over the telephone.

010.04B Appellant's Exhibits. Any exhibits the Appellant wishes to offer in addition to the Department's exhibits attached to the Notice of Hearing shall be submitted to and received by the Director no later than five (5) days prior to the date of the hearing. If such exhibits are not both filed and received by the Director within the time or the manner specified, such exhibits will not be admitted at the hearing unless substantial injustice will result.

010.05 In-person Hearings. If the Hearing Officer personally conducts the hearing, the Appellant shall have an opportunity to examine the exhibits at the hearing and may request copies be sent to them or their representative after the hearing.

010.06 Copies. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

011 WITNESSES.

011.01 Witnesses. If a party has a witness with personal knowledge of the case, their attendance at the hearing should be arranged. If a witness refuses to appear voluntarily or the voluntary production of requested documents is denied, a party may make a request that copies be sent to them or their representative after the hearing.

011.02 Subpoenas. Subpoenas shall be requested by praecipe at least five (5) days before any scheduled hearing. Any request that is not both filed and received by the Director within the time and manner specified shall be denied, unless substantial injustice would result. Only subpoenas granted and issued by the Director are valid in CDL disqualification hearings.

011.03 Content of Subpoena Requests. To be considered, a subpoena request must state all of the following for each subpoena requested:

011.03A The identification of the person or document desired; and

011.03B all addresses at which the subpoena may possibly be served; and

0110.3C The facts expected to be established for a reasoned determination of materiality by the Director; and

011.03D The fact that the person refused to appear voluntarily or the production of the requested documents was denied; and

011.03E If more than two subpoenas are requested to establish a single fact, the reason why requested subpoenas are not merely repetitive.

011.04 Subpoena Duces Tecum. A subpoena duces tecum shall be issued in the same manner and form as a subpoena for the attendance of a witness, and any command the person to whom it is directed to produce any books, papers, documents, or tangible items.

011.05 Witness Fees. The Appellant shall be responsible for the payment of witness fees and mileage, for any witness they subpoena, including the fees and expenses of expert witnesses the Appellant calls. The request for a subpoena must be accompanied by a certified check or money order, in the amount sufficient to cover witness fees and mileage.

011.06 Service. A subpoena issued by the Director shall be served by the Appellant or party by certified or registered mail, return receipt requested. The party requesting the subpoena shall be charged with the responsibility of service.

011.07 Discretion of Director. The decision to issue a subpoena shall be at the discretion of the Director.

011.08 Failure to Comply. In the case of the disobedience of a subpoena, the Director may invoke the aid of the applicable district court in requiring the attendance and testimony of witnesses, and the production of accounts, books, documents, or papers.

012 PREHEARING CONFERENCE PROCEDURES.

012.01 Prehearing conferences and orders. A hearing officer designated to conduct a hearing may determine, subject to the agency's rules and regulations, whether a prehearing conference will be conducted. If a prehearing conference is not held, a hearing officer for the hearing may issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

012.01A If a prehearing conference is conducted:

012.01A1 The hearing officer shall promptly notify the agency of the determination

that a prehearing conference will be conducted. The agency may assign another hearing officer for the prehearing conference; and

012.01A2 The hearing officer for the prehearing conference shall set the time and place of the conference and give reasonable written notice to all parties and to all persons who have filed written petitions to intervene in the matter. The agency shall give notice to other persons entitled to notice.

012.01A3 The notice referred to in subsection 012.01A2 shall include the following:

012.01A3(a) The names and mailing addresses of all parties and other persons to whom notice is being given by the hearing officer;

012.01A3(b) The name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the agency;

012.01A3(c) The official file or other reference number, the name of the proceeding, and a general description of the subject matter;

012.01A3(d) A statement of the time, place, and nature of the prehearing conference;

012.01A3(e) A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held;

012.01A3(f) The name, official title, mailing address, and telephone number of the hearing officer for the prehearing conference;

012.01A3(g) A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other stage of a contested case or who fails to make a good faith effort to comply with a prehearing order, may be held in default under the Administrative Procedure Act; and

012.01A3(h) Any other matters that the hearing officer considers desirable to expedite the proceedings.

012.01B The hearing officer shall conduct a prehearing conference, as may be appropriate, to deal with such matter as exploration of settlement possibilities, preparation of stipulations, clarification of issues, rulings on identity and limitation of the number of witnesses, objections to proffers of evidence, determination of the extent to which direct evidence, rebuttal evidence,

or cross-examination will be presented in written form and the extent to which telephone, television, or other electronic means will be used as a substitute for proceedings in person, order of presentation of evidence and cross-examination, rulings regarding issuance of subpoenas, discovery orders, and protective orders, and such other matters as will promote the orderly and prompt conduct of the hearing. The hearing officer shall issue a prehearing order incorporating the matters determined at the prehearing conference.

012.01C The hearing officer may conduct all or part of the prehearing conference by telephone, television, or other electronic means if each participant in the conference has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

013 CONTINUANCES.

013.01 Motions. Any party desiring a continuance of the hearing shall request the same in writing, stating the reasons for such request and, if required by the Director, submit proof of facts in support of such request in the time and manner specified. If a continuance is granted to either party, all parties shall be notified of such continuance.

013.02 Time. Motions for continuance will not ordinarily be considered unless filed and received by the Director at least five (5) days prior to the time fixed for the hearing.

013.03 Good Cause. Continuances shall be granted only upon good cause shown.

013.04 Content of Motion to Continue. A timely request to change the hearing date or time must state all of the following to be considered:

013.04A The reason for not being able to appear at the time or date scheduled; and

013.04B Why that reason is beyond the requesting party's control; and

013.04C Any fact which establishes that the need to reschedule arose after the scheduling of the hearing; and

013.04D The resulting specific undue hardship which would result if the request were to be denied.

013.05 Stays. Requests for continuances beyond the 30-day automatic disqualification, if granted by the Director, shall stay the automatic disqualification.

014 INTERPRETERS.

014.01 Non-English Speaking Appellants. When it is established that an Appellant is unable to communicate in the English language, the Appellant must employ the services of an interpreter for the hearing. The interpreter must be approved by the Director prior to or at the hearing. The Director will not appoint interpreters nor pay for the services of an interpreter.

014.02 Interpreters for Persons with Special Communication Needs. If an Appellant or a party has a special communication need such as deafness or muteness, the Appellant or party shall notify the Director no later than five (5) days before the hearing in writing so that the Director may arrange for an interpreter. The Department shall pay for the services of any interpreter so obtained.

015 PLEADINGS.

015.01 Other Pleadings. All pleadings to a commercial driver's license disqualification hearing shall be in legible form on 8½" x 11" paper showing the venue "Before the Director of the Department of Motor Vehicles" and shall be entitled as applicable in each particular situation.

016 CONDUCTING A CDL DISQUALIFICATION CASE.

016.01 Place and Time. Commercial Motor Vehicle Driver's License hearings shall be held in the county in which the violation occurred or in any county agreed to by the parties.

016.02 Hearing Officer. Hearings will be conducted by the Director of the Department or by his or her designee and such Hearing Officer shall have the powers established at 005 of these Rules and Regulations.

016.03 Open to the Public. Hearings conducted pursuant to these Rules and Regulations shall be open to the public except that upon motion of either party the Director may order that the hearing be closed. The Hearing Officer may at his or her discretion, set rules for the conduct of news media coverage of the hearing and may control the conduct of any other persons attending.

016.04 Official Record. The Hearing Officer shall tape record the proceedings. This recording by the Hearing Officer, along with exhibits received during the hearing, all pleadings, motions, objections, exceptions, officially noted facts, and briefs filed at the hearing or timely thereafter, shall constitute the entire official record of the hearings.

016.05 Other Recording. Proceedings may also be recorded in any manner consistent with a judicial proceeding.

016.06 Procedure for Informal Hearing. At the discretion of the hearing officer, the hearing may be conducted in the following order:

016.06A Hearing Officer opens hearing, introduces self, records those present, and enters appearance of any attorneys for the parties on the record;

016.06B Hearing Officer states scope and purpose of the hearing;

016.06C Hearing Officer offers Department's Exhibits into the hearing record, and rules on any objections to the exhibits;

016.06D Hearing Officer disposes of any pending motions, petitions, or other matters which need to be heard before evidence is taken;

016.06E The Hearing Officer first swears in and takes evidence from the arresting officer and any other witnesses for the Department; the Appellant may then ask questions of the Department's witnesses;

016.06F After the witnesses for the Department have testified and the Appellant has finished asking questions, the Hearing Officer swears in and takes evidence from the Appellant's witnesses and may ask questions of the witnesses;

016.06G During the hearing, any further exhibits offered by either party are marked and may be received into the record on the judgment of the Hearing Officer;

016.06H The Hearing Officer shall allow for closing arguments; and adjourn the hearing;

016.06I If either party requests or the Hearing Officer requests that the record be held open for the submission of additional evidence, or for the submission of briefs, the Hearing Officer may hold the record open for receipt of such evidence or such briefs; and

016.06J Telephone Hearings. Informal hearings may be conducted by telephone or teleconferencing at the discretion of the Director.

016.07 Procedure for hearings when the rules of evidence have been requested. The hearing shall have the following format:

016.07A The burden to go forward shall be on the attorney for the Department of Motor Vehicles.

016.07B The hearing shall be conducted according to the Nebraska Rules of Evidence as practiced in the District Courts.

016.07C **Record when Rules of Evidence have been Requested.** The court reporter shall record the proceedings. The recording by the court reporter, along with all the exhibits and other briefs, memoranda, received into the record, shall constitute the record of the hearing. The party requesting the rules of evidence shall be responsible for procuring a court reporter and the cost of the court reporter.

016.07D **Telephone Hearings.** Rules of evidence hearings may be conducted by telephone or teleconferencing, at the discretion of the Director.

016.07E Each party may be permitted to make an opening statement. Opening statements take place in the same order as the presentation of evidence.

016.07F Presentation of evidence.

016.07F1 Evidence will be received in the following order:

016.07F1(a) Evidence is presented by the petitioner;

016.07F1(b) Evidence is presented by the respondent;

016.07F1(c) Rebuttal evidence is presented by the petitioner; and

016.07F1(d) Surrebuttal evidence is presented by the respondent.

016.07G With regard to each witness who testifies, the following examination may be conducted:

016.07G1 Direct examination conducted by the party who calls the witness;

016.07G2 Cross-examination by the opposing party;

016.07G3 Redirect examination by the party who called the witness; and

016.07G4 Recross-examination by the opposing party.

016.07H After the evidence is presented, each party may have opportunity to make a closing argument. Closing arguments shall be made in the same order as the presentation of evidence. The hearing officer may request briefs in lieu of closing arguments.

017 **EVIDENCE.**

017.01 **Informal Hearings.** The hearings shall be conducted informally unless a request is made for the Rules of Evidence and the Rules of Evidence are in effect. The Hearing Officer may, within his or her discretion, admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs.

017.01A **Incompetent, Irrelevant or Immaterial Evidence.** Incompetent, irrelevant or immaterial evidence may be excluded.

017.01B **Unduly Repetitious Evidence.** Unduly repetitious evidence may be excluded.

017.01C **Hearsay.** Hearsay is admissible as evidence.

017.01D **Records of the Department.** Records and documents in the possession of the Department of Motor Vehicles may be received in evidence in the form in which the same are kept, and without certification.

017.01F **Video Tapes.** Video tape recordings may be admitted into evidence at the discretion of the Hearing Officer.

017.01G **Privilege.** The rules of privilege apply in informal hearings.

017.01H **Official Notice.** In the conduct of the hearing, the Hearing Officer may take official notice of, may take official notice of general technical or scientific facts within the specialized knowledge of the Department. Parties to the proceedings shall be notified before or during the hearing or by reference in preliminary reports or otherwise of material so noticed, and opportunity shall be afforded to contest such noticed facts.

017.01I Documentary evidence may be received in the form of copies or excerpts or incorporated by reference.

017.02 **Rules of Evidence Hearings.** In hearings for which the rules of evidence have been requested and granted, the hearing shall be conducted according to the Nebraska Rules of Evidence as practiced in the District Courts.

018 RULES OF EVIDENCE

018.01 Informal Hearings. Hearings shall be informal unless a party requests that the rules of evidence be in effect at the hearing in the specified manner.

018.02 Motion. Either party may file a motion for a rules of evidence hearing by delivering a written request to the agency at least three (3) days prior to the date set for hearing. Such request shall include the requesting party's agreement to be liable for the payment of the costs incurred thereby and upon any appeal or review thereof; including the costs of court reporting services which the party shall procure for the hearing.

018.03 Costs. All costs of a formal hearing shall be paid by the party or parties against whom a final decision is rendered.

019 FAILURE TO APPEAR; APPELLANT OR OFFICER(S).

019.01 Appellant. If the Appellant or their representative fails to appear at the hearing the Hearing Officer may proceed and reach a recommended decision based on the evidence presented at the hearing by the witnesses who appear.

019.02 Officer(s). The failure of the officer(s) to appear or be otherwise available for cross examination shall be cause for dismissal of the administrative license revocation by the Department except when the motorist does not appear or make any showing.

019.03 Appellant and Officer(s). If all parties and witnesses fail to appear, the Hearing Officer shall enter the exhibits into the record. The sworn report shall be prima facie evidence of the refusal or failure of the test. The Hearing Officer shall recommend a decision to the Director based solely on the exhibits.

020 VENUE.

020.01 Place and Time. The hearings shall be scheduled in the county in which the violation occurred or in any county agreed to by the parties and at such times as determined at the discretion of the Director.

020.02 Persons with Special Needs. If any party has a physical or other special need in regard to the accessibility of the venue of the hearing, the party shall notify the Department no later than five (5) days prior to the hearing in writing so that the Department can arrange an accessible hearing

location.

020.03 Change of Venue. A motion for a change of venue must be in writing to the Director and filed and received no later than five (5) days before the hearing. Failure to file the motion in the time specified shall be grounds for denial of the motion unless substantial injustice would result.

021 DECISIONS AND FINAL ORDER.

021.01 Written Order of disqualification. After hearing, Director shall issue an order of disqualification that shall be in writing and shall be accompanied by findings of fact and conclusions of law. The administrative determination shall be that the Appellant either refused to submit to a chemical test or tests of blood or breath or submitted to the required chemical test or tests and possessed an alcohol concentration at or in excess of .04 or more or that the administrative disqualification proceeding should be dismissed.

If the address on the Director's records differs from the address on the sworn report, the order shall be sent to both addresses.

021.02 Content. The decision and order shall include:

021.02A A caption heading "Before the Director of the Department of Motor Vehicles" and the name/s of the parties;

021.02B The time and place of the hearing;

021.02C The names of all parties or their attorneys or representatives who entered an appearance at the hearing;

021.02D A list of exhibits entered into the record and all material officially noted;

021.02E The findings of fact consisting of a concise statement of the conclusions upon each contested issue of fact;

021.02F The order stating that the Appellant either refused to submit to a chemical test or tests consisting of the action taken by the agency as a result of the facts found and the legal conclusions arising therefrom.

021.02G Notice of Period of Disqualification. The order shall state that after the person whose commercial driver's license or privilege to operate a commercial motor vehicle has

been revoked that his or her license has been disqualified and summarily revoked. The order shall (1) contain a list of the disqualifying convictions or administrative authority for the revocation with the dates on which such disqualifying violation occurred and the dates of such convictions or administrative determinations and the trial courts or administrative agency(ies) in which such administrative determinations were rendered; (2) state the period of the revocation and disqualification; and (3) include a demand that the commercial driver's license be returned to the Director immediately pursuant to Neb.Rev.Stat. 60-4,170.

021.03 Service of Administrative Determination. Such administrative order shall be served upon the Appellant by certified or registered mail to the Appellant at the address provided to the Director at the hearing, or if the Appellant does not appear at the hearing, to the address of the Appellant appearing on the records of the Director. If the address on the Director's records differs from the address on the sworn report, the order shall be sent to both addresses. Such order shall be mailed within seven (7) days following a hearing.

022 APPEAL.

022.01 District Court. Any party who feels himself or herself aggrieved because of an order of disqualification and revocation pursuant to Neb.Rev.Stat. 60-4,167 may appeal from such order to the district court of the county where the alleged violation occurred in accordance with the Administrative Procedure Act.

022.02 If a stay is allowed and the final judgment of the court finds against the person appealing, the period of disqualification shall commence at the time of the final judgment of the court for the full period of the time of the disqualification.

022.03 Stay upon Appeal. Such appeal shall not suspend the order of disqualification unless a stay is allowed by the court pending a final determination of the review.

023 COMPUTING TIME FOR MOTIONS, REQUESTS, PETITIONS OR PLEADINGS.

When a motion, request, petition or pleading is required to be filed, received or delivered a certain number of days before a hearing or other specified event and computing time is not prescribed by any other statute, the days for performance will be computed by excluding the day of the act or event and including the last day of the period. If the last day of the period falls on a Saturday, Sunday, or state holiday, the period shall include the next working day.

ATTACHMENT 1

EX PARTE CONTACT MEMORANDUM

COMPLETE THIS FORM AFTER ANY EX PARTE CONTACT

TO: FILE
FROM:
DATE:
RE: Ex parte contact

Motorist's name: _____
Appellant's Attorney: _____
Contact with: _____
Date of Contact: _____

Circumstances of Contact: (who initiated it? phone, in person, in writing? did you tell person of prohibition against ex parte contact?) _____

Substance of Contact: _____

Further action necessary? _____

Memo in file

Copy to: _____ Appellant; _____ Appellant's attorney;
_____ DMV attorney

Certificate of Service

The undersigned hereby certifies that on this _____ day of _____, 199__, a copy of the foregoing EX PARTE CONTACT MEMORANDUM was mailed by regular first-class U.S. Mail, sufficient postage prepaid to the following:



ATTACHMENT 2

NEBRASKA DEPARTMENT OF MOTOR VEHICLES

Commercial Motor Vehicle

Petition For Disqualification Hearing

If you wish to contest the disqualification, this Petition must be completed and returned to the Nebraska Department of Motor Vehicles, Legal Division, P.O. Box 94789, Lincoln, NE 68509-4789 in the addressed envelope provided. The Petition must be received or postmarked within ten (10) days after you receive Notice of Disqualification; otherwise, your right to a hearing to contest the automatic disqualification of your commercial driver's license or operating privileges will be foreclosed and your license will be automatically disqualified. The Notice of Disqualification will be deemed received by you five (5) days after mailing of the Notice to you by the Director of the Department of Motor Vehicles.

Check all boxes that apply:

- ☐ I hereby request a hearing to contest the disqualification of my commercial driver's license or operating privileges.
- ☐ I request a copy of the Department's rules and regulations governing hearing procedures, 249 NAC 1. SEND IN \$1.00 FOR COPYING WITH THIS PETITION. Make checks or money orders payable to the Department of Motor Vehicles. DO NOT SEND CASH.

CITY AND COUNTY WHERE CITED		DATE OF VIOLATION / /	
LAW ENFORCEMENT AGENCY			
NAME (LAST, FIRST, MIDDLE)	DATE OF BIRTH / /	DRIVER LICENSE NO.	STATE
CURRENT MAILING ADDRESS WHERE YOU WANT NOTICE SENT STREET, RFD, OR BOX			
CITY, STATE, ZIP CODE			
HOME PHONE ()	OFFICE PHONE ()	SIGNATURE	
NAME OF YOUR ATTORNEY	ATTORNEY'S PHONE NUMBER ()	ADDRESS OF ATTORNEY	

If you have any further questions, please contact the Department of Motor Vehicles at:

Nebraska Department of Motor Vehicles
Legal Division
P.O. Box 94789
Lincoln, NE 68509-4789
Telephone: (402) 471-9593